

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA)	
)	
V.)	Criminal No. 18-292
)	
ROBERT BOWERS)	

SUPPLEMENTAL MOTION TO APPOINT LEARNED COUNSEL

AND NOW, comes the Defendant, Robert Bowers, through his counsel, First Assistant Federal Public Defender Michael J. Novara, and Elisa A. Long, Assistant Federal Public Defender, and hereby respectfully moves that this Court appoint counsel “learned in the law applicable to capital cases.” See 18 U.S.C. § 3005.

1. Defendant, Robert Bowers (hereinafter “Mr. Bowers), has been charged in a forty-four count Indictment, alleging violations of Title 18 U.S.C. §§247(a)(2) and 247(d)(1); Title 18 U.S.C. §§924(c)(1)(A)(iii) and 924(j)(i); Title 18 U.S.C. §§247(a)(2), 247(d)(1) and 247(d)(3); Title 18 U.S.C. §§ 924(c)(1)(A)(iii); Title 18 U.S.C. §§ 247(a)(2), 247(d)(1) and 247(d)(3); Title 18 U.S.C. §§ 247(a)(2) and 247(d)(3); and Title 18 U.S.C. §924(c)(1)(A)(iii). Thirty-two counts carry the maximum penalty of death.

2. Citing the federal death penalty statute, 18 U.S.C. §3591 et seq, the Indictment contains a Notice of Special Findings alleging various facts that are

statutory precursors to the imposition of the death penalty pursuant to the federal death penalty statute.

3. Mr. Bowers is currently represented by the Federal Public Defender's Office. In light of the fact that some of his charges include a maximum penalty of death, 18 U.S.C. § 3005 provides for the appointment of additional counsel "learned in the law" of the death penalty:

Whoever is indicted for treason or other capital crime shall be allowed to make his full defense by counsel; and the court before which the defendant is to be tried, or a judge thereof, shall promptly, upon the defendant's request, assign 2 such counsel, of whom at least 1 shall be learned in the law applicable to capital cases, and who shall have free access to the accused at all reasonable hours. In assigning counsel under this section, the court shall consider the recommendation of the Federal Public Defender organization, or, if no such organization exists in the district, of the Administrative Office of the United States Courts. The defendant shall be allowed, in his defense to make any proof that he can produce by lawful witnesses, and shall have the like process of the court to compel his witnesses to appear at his trial, as is usually granted to compel witnesses to appear on behalf of the prosecution.

4. Accordingly, upon request, Mr. Bowers is entitled to additional "learned" counsel. Mr. Bowers hereby makes this request. Specifically, Mr. Bowers requests that this Court appoint Judy Clarke, Esquire, as the additional "learned" counsel in this case.

5. Judy Clarke is a partner in the firm of Clarke Johnston Thorp & Rice, in San Diego, California. She has served as the Executive Director of Federal Defenders of Eastern Washington & Idaho and Federal Defenders of San Diego, Inc., argued twice before the U.S. Supreme Court, and represented defendants in a number of high profile capital cases, including Susan Smith in Union, South Carolina, Theodore Kaczynski, charged as the “Unabomber”, Eric Robert Rudolph, charged with an abortion clinic bombing in Birmingham, Alabama, Jared Loughner, charged in the January 2011 shootings in Tucson, Arizona and Dzhokhar Tsarnaev, charged in the 2013 Boston Marathon bombing.

Ms. Clarke is a 1974 graduate of Furman University, and a 1977 graduate of the University of South Carolina School of Law. She is a Past President of the National Association of Criminal Defense Lawyers and a Fellow in the American College of Trial Lawyers. In 2015 the Ninth Circuit honored her with the Circuit’s John Frank Award recognizing “a lawyer or judge whose life and practice display sterling character and unquestioned integrity, coupled with ongoing dedication to the highest standards of the legal profession and the rule of law.” In 2017, the American College of Trial Lawyers bestowed on her their prestigious Griffin Bell Award for Courageous Advocacy. A condensed version of her CV is attached hereto as Exhibit A.

6. Attorney Clark is willing to accept the appointment to represent Mr. Bowers.

WHEREFORE, Defendant, Robert Bowers, respectfully requests that Judy Clarke, Esquire be immediately appointed to serve as additional counsel on his behalf in this case and that this Court execute a CJA Form 30 for Attorney Clarke.

Respectfully submitted,

s/ Michael J. Novara

Michael J. Novara
First Assistant Federal Public Defender
Attorney I.D. No. 66434

s/ Elisa A. Long

Elisa A. Long
Assistant Federal Public Defender
Attorney I.D. No. 79723